

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DENNIS W. VAN DE MARK, SR.,)

Plaintiff,) 4:05cv3166

vs.) ORDER on INITIAL REVIEW

CITY OF LINCOLN, NEBRASKA,)

defendant.)

This matter is before the court for initial review of the complaint filed by the plaintiff, Dennis W. Van De Mark, Sr., and on filing no. 2, the plaintiff's motion for leave to proceed in forma pauperis ("IFP"). As a preliminary matter, filing no. 2, the plaintiff's motion to proceed IFP, is granted.

The plaintiff asserts federal civil rights claims against the City of Lincoln, Nebraska. He has received citations for violating a municipal ordinance banning panhandling, and the plaintiff now seeks damages and declaratory and injunctive relief on the theory that the panhandling ordinance violates the First Amendment to the United States Constitution.

I find that the plaintiff's complaint need not be dismissed on initial review. Therefore, as initial review of the complaint is now concluded, it is time for the plaintiff to obtain service of process on the defendant, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendant, after the plaintiff completes the appropriate forms.

IT IS THEREFORE ORDERED:

1. Filing no. 2, the plaintiff's Motion for Leave to Proceed In Forma Pauperis, is granted.

2. To obtain service of process on the defendant, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court is directed to provide the plaintiff with a copy of this order and ONE summons and 285 form.

3. When completing the forms for service of process on political subdivisions of the State, e.g., a city or county, the plaintiff must comply with Neb. Rev. Stat. § 25-510.02(2), which states: "Any county, city, or village of this state may be served by personal, residence, or certified mail service upon the chief executive officer, or clerk." A summons on the City of Lincoln may be directed to the Mayor or City Clerk, and the address may be obtained from a telephone directory.

4. The plaintiff shall, as soon as possible, send the completed summons and 285 forms back to the Clerk of Court. In the absence of those forms, service of process cannot occur.

5. Upon receipt of the completed summons and 285 forms, the Clerk will sign each summons, to be forwarded, together with a copy of the complaint, to the U.S. Marshal for service of process. A plaintiff proceeding IFP does not have to copy the complaint; the court will do so. The U.S. Marshal shall serve each summons and complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

6. Fed. R. Civ. P. 4 requires service of the summons and complaint on a defendant within 120 days of filing the complaint. However, because in this order the plaintiff is informed for the first time of these requirements, the plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process. Failure to obtain service of process on a defendant within 120 days of the date of this order may result in dismissal of this matter without further notice as to such defendant.

7. After an appearance has been filed by the defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Parties usually serve copies on other parties by first class mail.

8. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to the defendant(s) or to the attorney of any represented defendant. To send communications to the court without serving a copy on the other parties to the case violates the rules of court.

9. The defendant shall have twenty (20) days after receipt of the summons to answer or otherwise respond to the complaint.

10. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court.

11. The plaintiff shall keep the court informed of an address where he may be reached at all times while this case is pending. Failure to do so may result in dismissal.

DATED this 24th day of October, 2005.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge